

LEGISLATIVE COUNCIL II
JUN 21 1979

96TH CONGRESS
1ST SESSION

S. 1790

Entitled the "Privacy Protection Act of 1979".

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 21 (legislative day, JUNE 21), 1979

Mr. BAYH (for himself and Mr. BAUCUS) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

Entitled the "Privacy Protection Act of 1979".

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Privacy Protection Act of
4 1979".

5 TITLE I—FIRST AMENDMENT PRIVACY

6 PROTECTION

7 SEC. 101. (a) Notwithstanding any other law, it shall be
8 unlawful for a government officer or employee, in connection
9 with the investigation or prosecution of a criminal offense, to
10 search for or seize any work product materials possessed by a

1 person in connection with a purpose to disseminate to the
2 public a newspaper, book, broadcast, or other similar form of
3 public communication, in or affecting interstate or foreign
4 commerce; but this provision shall not impair or affect the
5 ability of any government officer or employee, pursuant to
6 otherwise applicable law, to search for or seize such materi-
7 als, if—

8 (1) there is probable cause to believe that the
9 person possessing the materials has committed or is
10 committing the criminal offense for which the materials
11 are sought: *Provided, however,* That a government offi-
12 cer or employee may not search for or seize materials
13 described in subsection 101(a) under the provisions of
14 this paragraph if the offense for which the materials
15 are sought consists of the receipt, possession, commu-
16 nication, or withholding of such materials or the infor-
17 mation contained therein (but such a search or seizure
18 may be conducted under the provisions of this para-
19 graph if the offense consists of the receipt, possession,
20 or communication of information relating to the nation-
21 al defense, classified information, or restricted data
22 under 18 U.S.C. 793, 18 U.S.C. 794, 18 U.S.C. 797,
23 18 U.S.C. 798, 42 U.S.C. 2274, 42 U.S.C. 2275, 42
24 U.S.C. 2277, or 50 U.S.C. 783); or

1 (2) there is reason to believe that the immediate
2 seizure of the materials is necessary to prevent the
3 death of or serious bodily injury to a human being.

4 (b) Notwithstanding any other law, it shall be unlawful
5 for a government officer or employee, in connection with the
6 investigation or prosecution of a criminal offense, to search
7 for or seize documentary materials, other than work product,
8 possessed by a person in connection with a purpose to dis-
9 seminate to the public a newspaper, book, broadcast, or other
10 similar form of public communication, in or affecting inter-
11 state or foreign commerce; but this provision shall not impair
12 or affect the ability of any government officer or employee,
13 pursuant to otherwise applicable law, to search for or seize
14 such materials, if—

15 (1) there is probable cause to believe that the
16 person possessing the materials has committed or is
17 committing the criminal offense for which the materials
18 are sought: *Provided, however,* That a government offi-
19 cer or employee may not search for or seize materials
20 described in subsection 101(b) under the provisions of
21 this paragraph if the offense for which the materials
22 are sought consists of the receipt, possession, commu-
23 nication, or withholding of such materials or the infor-
24 mation contained therein (but such a search or seizure
25 may be conducted under the provisions of this para-

1 graph if the offense consists of the receipt, possession,
2 or communication of information relating to the nation-
3 al defense, classified information, or restricted data
4 under 18 U.S.C. 793, 18 U.S.C. 794, 18 U.S.C. 797,
5 18 U.S.C. 798, 42 U.S.C. 2274, 42 U.S.C. 2275, 42
6 U.S.C. 2277, or 50 U.S.C. 783); or

7 (2) there is reason to believe that the immediate
8 seizure of the materials is necessary to prevent the
9 death of or serious bodily injury to a human being; or

10 (3) there is reason to believe that the giving of
11 notice pursuant to a subpoena duces tecum would result
12 in the destruction, alteration, or concealment of the
13 materials; or

14 (4) the materials have not been produced in re-
15 sponse to a court order directing compliance with a
16 subpoena duces tecum, and

17 (A) all appellate remedies have been ex-
18 hausted; or

19 (B) there is reason to believe that the delay
20 in an investigation or trial occasioned by further
21 proceedings relating to the subpoena would threat-
22 en the interest of justice. In the event a search
23 warrant is sought pursuant to this subparagraph,
24 the person possessing the materials shall be af-
25 farded adequate opportunity to submit an affidavit

1 setting forth the basis for any contention that the
2 materials sought are not subject to seizure.

3 **TITLE II—CONFIDENTIAL INFORMATION**
4 **PROTECTION**

5 SEC. 201. (a) Notwithstanding any other law it shall be
6 unlawful for a governmental officer or employee, in connec-
7 tion with the investigation or prosecution of a criminal of-
8 fense, to search for or seize any documentary material or
9 work product that would be considered by the jurisdiction of
10 the person in possession of the materials to be privileged ma-
11 terial under that jurisdiction's statutory or case law. This
12 provision shall not impair or affect the ability of any govern-
13 mental officer or employee pursuant to otherwise applicable
14 law to search for or seize materials if—

15 (1) there is probable cause to believe that the
16 person possessing the materials has committed or is
17 committing the criminal offense for which the materials
18 are sought; or

19 (2) there is reason to believe that the immediate
20 seizure of the materials is necessary to prevent the
21 death of or serious bodily injury to a human being; or

22 (3) there is reason to believe that the giving of
23 notice pursuant to a subpoena duces tecum would result
24 in the destruction, alteration, or concealment of materi-
25 als; or

1 (4) the materials have not been produced in re-
2 sponse to a court order directing compliance with a
3 subpoena duces tecum, and

4 (A) all appellate remedies have been ex-
5 hausted; or

6 (B) there is reason to believe that the delay
7 in an investigation or trial occasioned by further
8 proceedings relating to the subpoena would threat-
9 en the interests of justice. In the event a search
10 warrant is sought pursuant to this subparagraph,
11 the person possessing the materials shall be af-
12 farded adequate opportunity to submit an affidavit
13 setting forth the basis for any contention that the
14 materials sought are not subject to seizure.

15 TITLE III—CITIZENS PRIVACY PROTECTION

16 SEC. 301. (a) Notwithstanding any other law, it shall be
17 unlawful for a government officer or employee, in connection
18 with the investigation or prosecution of a criminal offense, to
19 search for or seize any documentary or work product materi-
20 als possessed by any person, but this provision shall not
21 impair or affect the ability of any government officer or em-
22 ployee, pursuant to otherwise applicable law, to search for or
23 seize such materials, if—

24 (1) there is probable cause to believe that the
25 person possessing the materials has committed or is

1 committing the criminal offense for which the materials
2 are sought; or

3 (2) there is reason to believe that the immediate
4 seizure of the materials is necessary to prevent the
5 death of or serious bodily injury to a human being; or

6 (3) there is reason to believe that the giving of
7 notice pursuant to a subpoena duces tecum would result
8 in the destruction, alteration, or concealment of the
9 materials; or

10 (4) the materials have not been produced in re-
11 sponse to a court order directing compliance with a
12 subpoena duces tecum, and

13 (A) all appellate remedies have been ex-
14 hausted; or

15 (B) there is reason to believe that the delay
16 in an investigation or trial occasioned by further
17 proceedings relating to the subpoena would threat-
18 en the interests of justice. In the event a search
19 warrant is sought pursuant to this subparagraph,
20 the person possessing the materials shall be af-
21 farded adequate opportunity to submit an affidavit
22 setting forth the basis for any contention that the
23 materials sought are not subject to seizure.

1 employee had a reasonable good faith belief in the law-
2 fulness of his conduct.

3 (b) The United States, a State, or any other governmen-
4 tal unit, liable for violations of this Act under paragraph
5 402(a)(1), may not assert as a defense to a claim arising
6 under this Act the immunity of the officer or employee whose
7 violation is complained of or his reasonable good faith belief
8 in the lawfulness of his conduct, except that such a defense
9 may be asserted if the violation complained of is that of a
10 judicial officer.

11 (c) The remedy provided by paragraph 402(a)(1) against
12 the United States, a State, or any other governmental unit is
13 exclusive of any other civil action or proceeding for conduct
14 constituting a violation of this Act, against the officer or em-
15 ployee whose violation gave rise to the claim, or against the
16 estate of such officer or employee.

17 (d) A person having a cause of action under this section
18 shall be entitled to recover actual damages but not less than
19 liquidated damages of \$1,000, such punitive damages as may
20 be warranted, and such resonable attorneys' fees and other
21 litigation costs reasonably incurred as the court, in its discre-
22 tion, may award: *Provided, however,* That the United States,
23 a State, or any other governmental unit shall not be liable for
24 interest prior to judgment.

1 (e) The Attorney General may settle a claim for dam-
2 ages brought against the United States under this section,
3 and shall promulgate regulations to provide for the com-
4 mencement of an administrative inquiry following a determi-
5 nation of a violation of this Act by an officer or employee of
6 the United States and for the imposition of administrative
7 sanctions against such officer or employee if warranted.

8 (f) The district courts shall have original jurisdiction of
9 all civil actions arising under this section.

10 SEC. 403. (a) "Documentary materials", as used in this
11 Act, means materials upon which information is recorded,
12 and includes, but is not limited to, written or printed materi-
13 als, photographs, tapes, videotapes, negatives, films, out-
14 takes, and interview files.

15 (b) "Work product", as used in this Act, means the
16 matter representing the work done by a person in possession
17 of such material, as if the work was done by an attorney in
18 the course of an attorney-client relationship, except such
19 work product as constitutes contraband or the fruits of instru-
20 mentalities of a crime. For the purposes of title I of this Act,
21 "work product" means any documentary materials created
22 by or for a person in connection with his plans, or the plans
23 of the person creating such materials to communicate to the
24 public.

11

1 (c) "Any other governmental unit", as used in this Act,
2 includes the District of Columbia, the Commonwealth of
3 Puerto Rico, any territory or possession of the United States,
4 and any local government, unit of local government, or any
5 unit of State government.

○